IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.711 OF 1998

1. Sanjeev M.Deshmukh.
2. Mrs.A,S.Deshmukh
residents of Flat No.115-B,
Avinash Building, 11th floor,
Versova Road, Andheri (W),
Mumbai 400 058. .... Petitioners.

Versus.

1. The Competent Authority
Smugglers and Foreign
Exchange Manipulators
(Forfeiture of Property)
Act, 9th floor, Lok Nayak
Bhavan, Delhi-110 003.

2. The West Coast Cooperative
Housing Society Ltd.,
Road, Andheri (West),
Mumbai 400 058.

3. The State of Maharashtra.

4. The Union of India. .... Respondents.

Shri S.B.Keswani with Shri K.S.Patil for the Petitioners.

Shri J.C.Satpute for the Respondents Nos.1 and 4.

Shri C.J.Sawant with Shri Y.D.Mulani for the Respondent No.2.

Shri B.R.Patil, P.P. for Respondent No.3

CORAM : SMT.RANJANA DESAI, &
ABHAY S. OKA, JJ.

Date on which
hearing concluded : 16th December, 2004.

Date on which
Judgment pronounced : 23rd December, 2004.

JUDGMENT (Per Abhay S.Oka, J.)

1. The Petitioners by filing this petition under Article 226 of the Constitution of India have taken exception to the order dated 31st January 1996 passed by the Competent Authority, SAFEMFOPA & NDPSA, New Delhi, under section 7(1) and section 7(3) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as "SAFEMA") and confirmation thereof by the Appellate Tribunal vide order dated 17th April 1998.

2. One Shri Ashok Kumar Kapoor (hereinafter referred to as "the detenu") was detained vide order dated 28th August 1978 under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "COFEPOSA"). The detenu was the owner of a flat bearing No.115-B in the building "Avinash" in the West Coast Cooperative Housing Society Ltd., Versova Road, Andheri, Bombay. The case of the Petitioners is that by an agreement of sale dated 24th October 1980, the detenu agreed to sell the said flat to the Petitioner No.1 for a total consideration of Rs.60,000/-. The case of the Petitioners is that on the date of execution of the agreement, the entire consideration was paid by the Petitioner No.1 to the detenu by a demand draft and on the very day the

Petitioner No.1 was put in possession of the said flat No.115-B (hereinafter referred to as "the said flat"). The case of the Petitioners is that the detenu was holding the said flat by virtue of being a member of the Respondent No.2 the West Coast Cooperative Housing Society Ltd. The detenu was holding five shares of the said society. The case of the Petitioners is that on the basis of the said Agreement executed by the detenu, the share certificates were transferred in favour of the Petitioner No.1. The case of the Petitioners is that in the year 1994 the name of the Petitioner No.2 was incorporated in the share certificate along with the Petitioner No.1 as a co-member. The Petitioner No.2 is the wife of Petitioner No.1. Further case of the Petitioners is that from the date of the said agreement, they are in possession of the said flat.

3. The detenu was served with a show cause notice dated 27th September 1980 under section 6(1) of the SAFEMA. In the said notice the Competent Authority under the SAFEMA alleged that the detenu was holding the various properties described in the schedule to the said notice which were illegally acquired properties within the meaning of clause (c) of sub-section (1) of section 3 of the SAFEMA. By the said notice the detenu was called upon to communicate within the time stipulated therein

the source of his income, earnings or assets by means of which he has acquired the properties mentioned in the schedule. The detenu was also called upon to show cause why the said properties should not be declared to be illegally acquired properties and forfeited to the Central Government. The said flat was shown at item No.4 of the Schedule to the said notice. The case of the Petitioners is that neither the Petitioners nor the said society were aware of the said notice. It is the case of the Petitioners that before entering into the said Agreement, they made enquiries with the Respondent No.2-society about the title of the detenu to the said flat. It is stated by the Petitioner that only after verifying the title of the detenue, the Petitioner No.1 entered into an Agreement with the detenue.

4. The Petitioners stated that some time in the month of May 1996, they received a letter from the Competent Authority, informing them that the said flat stood forfeited by order dated 31st January 1996 passed by the Competent Authority, New Delhi. An order dated 10th April 1996 was passed by the Respondent No.1 under section 19(1) of the SAFEMA calling upon the legal representatives of the detenu to hand over possession of the said flat and other properties. It is to be noted here that after the showcause notice under section 6(1)

was issued, the detenu expired. Being aggrieved by the said order, the Petitioners preferred an appeal under section 12 of the SAFEMA before the Appellate Tribunal for Forfeited Property, New Delhi. By Judgment and Order dated 17th April 1998, the Appellate Authority dismissed the appeal preferred by the Petitioners. This Writ Petition was filed by the Petitioners on 15th March 1998. On 7th June 1999 a Division Bench of this Court issued a Rule in this petition and granted interim relief in terms of prayer clause (c). Thus the operation of the order of the Competent Authority remained stayed during the pendency of this petition.

5. Shri Yogendra Singh Gangwar, Inspecting Officer with the Competent Authority, SAFEMA, Mumbai, has filed affidavit-in-reply dated 8th September 1998 and opposed the petition. There are two affidavits-in-reply filed on behalf of the Respondent No.2-society by its Hon.Secretary and Ex.Hon.Secretary respectively. Another Affidavit has been filed by the Respondent No.2-Society by way of reply to the Affidavit in Reply filed on behalf of the Respondent No.1 The Respondent No.2-society has supported the Petitioners by stating that the said society never received any intimation or information about the notice under section 6(1) of SAFEMA issued to the detenue. The Ex-Secretary of the

Respondent No.2-society stated that the Petitioner No.1 entered into the said Agreement with the detenu after verifying the title of the detenue to the said flat. The Petitioner No.1 has filed a separate affidavit in June 1998 in which he has contended that he has acquired the said flat and shares of the Respondent No.2-society after exercising due diligence which is expected of a prudent man. He stated that he made enquiries with the Chairman, Secretary and Managing Committee Members as well as other the neighbours and no one gave any adverse information to him. The Petitioner No.1 stated that only after making enquiries in good faith he entered into the transaction in respect of the said flat. He reiterated that neither the Society nor any of its office bearers had any knowledge about the notice issued under section 6(1) of the SAFEMA.

6. On 5th October 2004 and 14th October 2004 this petition was heard extensively. On 14th October 2004, we directed that the record of the Appeal before the Appellate Tribunal should be produced. Accordingly the learned Counsel appearing for the Respondents Nos.1 and 4 brought the record which was inspected by the learned Counsel appearing for the parties and zerox copies of some of the relevant documents on the record of the Appeal are placed on record of this petition.

7. While passing the order dated 31st January 1996, the Competent Authority recorded a finding that the detenu and his legal representatives could not discharge the burden of proving the existence of legal source for acquiring the said flat. The Competent Authority recorded that a copy of the said agreement executed by the detenu in favour of the Petitioner No.1 was on record and the Competent Authority noted the contention raised by the detenu that as the said flat was already sold there was no question of forfeiture of the said flat. The Competent Authority held that the sale of the flat in favour of the Petitioner No.1 was collusive with a desperate bid to evade statutory process of forfeiture. The Competent Authority noted that the show cause notice dated 27th September 1980 was issued on 3rd October 1980 and was served on the detenu on 8th October 1980. The Competent Authority held that as the alleged sale transaction was made after service of notice under section 6(1) of the SAFEMA, the transfer will have to be treated as null and void and will have to be ignored.

8. The Appellate Tribunal relying upon section 11 of the SAFEMA held that as the purported transfer of the said flat was made subsequent to the service of notice under section 6(1) upon the detenu, the said transfer was null and void. The Appellate Authority noted the

submission made by the Petitioners that the ownership of the said flat was vesting in Respondent No.2-society. However, the Appellate Tribunal held that the order of forfeiture was confined to the extent of the right, title and interest held by the detenu in the said flat. The Appellate Tribunal negatived the contention of the Petitioner No.1 that he was a bonafide purchaser by holding that the plea of bonafide purchase was available only in a case where the transaction is entered into before issuance of notice under section 6(1) of the SAFEMA. Relying upon section 11 of the SAFEMA, the Appellate Tribunal held that as the said agreement is executed after service of notice under section 6(1) of the SAFEMA, the transaction covered by the said agreement will have to be ignored as non-existent in the eyes of law. The Appellate Tribunal lastly held that the Respondent No.2-Society was not affected as the forfeiture was confined only to the right, title and interest of the detenu.

9. Shri Keswani, the learned Counsel appearing for the Petitioners submitted that the order passed by the Competent Authority was in violation of the principles of natural justice. He submitted that the Competent Authority was aware about the execution of the said agreement and therefore, the Petitioner No.1 being a

person affected ought to have been given an opportunity of being heard by the Competent Authority before passing the order of forfeiture. He submitted that the said flat cannot be termed as an illegally acquired property as the Petitioner was a bonafide purchaser within the meaning of section 2(2)(e) of the SAFEMA. He submitted that the Competent Authority has recorded a finding that the transaction between the Petitioner No.1 and the detenue was a collusive transaction. He submitted that such a finding could not have been recorded without issuing notice to the Petitioner No.1 and without giving an opportunity to the Petitioners of being heard. He submitted that on plain reading of section 11 of SAFEMA, any transaction entered into after issuance of notice under section 6(1) but before passing the order of forfeiture under section 7 does not become null and void. The said transaction will became null and void only after the order of forfeiture is passed under section 7 of the SAFEMA. He, therefore, submitted that the Appellate Authority committed an error by holding that that the said agreement was required to be ignored as being null and void. He strenuously urged that even for coming to the conclusion that the said agreement was non-existent or null and void, the Competent Authority ought to have heard the Petitioner No.1. He lastly submitted that the order of forfeiture deserves to be

quashed and set aside as the Petitioner was a bonafide purchaser for value without having knowledge of the notice issued under section 6(1) of SAFEMA. Without prejudice to the aforesaid contentions, Shri Keswani urged that the matter should be remanded to the Competent Authority to enable the Petitioner to satisfy the Competent Authority that the Petitioner No.1 was a bonafide purchaser. Shri Keswani relied upon the Judgment of the Apex Court reported in 1994(5) SCC page 54 (Attorney General of India v/s. Amrutlal). He also placed reliance on the Judgment of the Division Bench of this Court reported in 2002(2) Mah.L.J. page 290 (Narayan Vittappa Kudva v/s. Union of India). He relied upon another Judgment of the Apex Court reported in AIR 1970 SC page 170 (A.A.Kraipak v/s. Union of India and others).

10. Shri Satpute, the learned Counsel appearing for Respondent Nos.1 and 4 relied upon the Judgment of the Apex Court reported in (1998) 1 SCC page 703 (Aamenabai Tayebaly & others v/s. Competent Authority under SAFEMA and others) and submitted that the said agreement which was admittedly entered into after issuance of notice under section 6(1) of the SAFEMA was null and void. He submitted that as the Petitioner No.1 was not entitled to claim any right, title and interest on the basis of

the said agreement which was null and void, there was no question of the Competent Authority issuing notice to the Petitioner No.1 before passing the order of forfeiture. He submitted that there is nothing on record to show that the Petitioner No.1 was a bonafide purchaser. He therefore submitted that no interference was called for.

11. Shri C.J.Sawant, the learned Senior Counsel appearing for Respondent No.2-Society has supported the Petitioners. He submitted that the Respondent No.2-society is a tenant co-partnership society and therefore, the ownership of the land and the building vests in the Respondent No.2-society. He submitted that the order of forfeiture could not have been passed without notice to the Respondent No.2-society. He submitted that the detenu being a member of the society had only a right to occupy the said flat by virtue of his membership. He submitted that the Respondent No.2-society was directly affected by the order of forfeiture and as the said order was passed without notice to the Respondent No.2, the order was vitiated by breach of principles of natural justice. He pointed out that the Judgment of the Apex Court in the case of Aamenabai (supra) has no application to the facts of the present case. He has taken us through the facts of the

case before the Apex Court and submitted that what is held by the Apex Court on page 713 of the report was not the ratio of the judgment of the Apex Court but the observation made by the Apex Court in the context of the facts of the case before it. He submitted that section 11 of the SAFEMA operates in two stages. He contended that the transfer of property made after issuance of notice under section 6(1) becomes null and void only after the order of forfeiture is passed under section 7. He therefore submitted that so long as the order of forfeiture was not passed, the said agreement continues to be valid and therefore, the Competent Authority ought to have taken into consideration the said agreement. He submitted that the Competent Authority was duty bound to consider whether the said agreement was a bonafide transaction or not and therefore, the order of forfeiture could not have been passed without giving an opportunity of being heard to the Petitioner No.1 and Respondent No.2-society.

12. Shri Keswani in reply to the submissions of the learned Counsel appearing for the Respondents Nos.1 and 4 invited our attention to certain documents on the record of the Appellate Authority. He pointed out that the report dated 12th December 1978 was submitted by an Inspector of Respondent No.4 in which it was stated that the detenue was trying to dispose of the flat. The

Inspector suggested that suitable action be taken for preventing sale of the flat. He also pointed that a letter dated 24th October 1980 was issued by the Competent Authority to the Manager of Canara Bank by which the said Bank was informed that notice under section 6(1) has been issued in respect of various properties of the detenu including the Saving Bank Account of the detenu with the said Bank. He invited our attention to the letter dated 15th December 1978 sent by the Competent Authority, Bombay, to the Assistant Director in the office of the Competent Authority at New Delhi. The said letter takes note of the report of the Inspector dated 12th December 1978. By the said letter the Competent Authority at Bombay called upon the Assistant Director in the office of the Competent Authority at New Delhi to take action immediately as detenu was trying to sell the said flat. He submitted that it was the duty of the Competent Authority to take immediate action in the year 1978 itself so that the sale in favour of the Petitioner No.1 could have been avoided. He submitted that it was duty of the Competent Authority to inform the Respondent No.2-society as regards service of notice under section 6(1) of the SAFEMA in respect of the said flat so that when the Petitioner made enquiry with the said Society before entering into agreement, he could have been made

aware of the said notice. He submitted that the Petitioners made enquiries with the Respondent No.2 society about the title of the detenue before entering into the agreement and no provision of law requires him to make enquiries with the Competent Authorities under the various enactments about the pendency of proceedings. He submitted that it was due to the negligence on the part of the Respondent No.1 that the Petitioners have suffered.

13. Before considering the submissions, the admitted factual position will have to be summarised. The detenu was detained under the provisions of the COFEPOSA vide order dated 28th August 1978. A notice dated 27th September 1980 was issued by the Competent Authority under section 6(1) of the SAFEMA. The said notice was served on the detenu on 3rd October 1980. After service of notice, on 24th October 1980 the said agreement was executed by the detenu in favour of the Petitioner No.1. On 14th November 1980 the detenu filed a writing before the Competent Authority in which he had disclosed that the said flat was sold by him on 24th October 1980. In May 1996 the Petitioner received a letter from the Competent Authority disclosing forfeiture of the said flat. Neither the Petitioner No.1 nor the Respondent No.2-society were aware about issuance of notice dated

27th September 1980 before the order of forfeiture was passed.

14. In the light of this factual matrix, we will have to consider the rival submissions. Before we deal with the rival submissions it will be necessary to refer to the provisions of SAFEMA. Sub-section (1) of section 2 of the Act provides that the provisions of SAFEMA shall apply to the persons specified in sub-section (2). Clause (b) of sub-section (2) of section 2 provides that the person in respect of whom an order of detention has been made under COFEPOSA is a person within the meaning of the said section. Clause (e) of sub-section (2) of section 2 provides that any holder of any property which was at any time previously held by a person referred to in clause (b) is also a person to whom provisions of SAFEMA shall apply. However, clause (e) carves out an exception in favour of the holder who is or was a transferee in good faith for adequate consideration. Thus any person holding any property which was held at any time by the detenu against whom the order of detention has been passed under the COFEPOSA will be governed by the provisions of SAFEMA unless it is established that such person is a transferee in good faith for adequate consideration. Section (3)(c) defines the illegally acquired property, which reads as

under:

3(c)"illegally acquired property", in relation to any person to whom this Act applies, means -

(i) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by or under any law for the time being in force relating to any matter in respect of which Parliament has power to make laws; or

(ii) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets in respect of which any such law has been contravened; or

(iii)any property acquired by such person, whether before or after the commencement

of this Act, wholly or partly out of or by means of any income, earning or assets the source of which cannot be proved and which cannot be shown to be attributable to any act or thing done in respect of any matter in relation to which Parliament has no power to make laws; or

(iv) any property acquired by such person whether before or after the commencement of this Act for a consideration, or by any means wholly or partly traceable to any property referred to in sub-clause (i) to (iii) or the income or earnings from such property; and includes -

(A) any property held by such person which would have been in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous

holders, the last of such previous holders is or was a transferee in good faith for adequate consideration;

(B) any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property falling under item(A), or the income or earnings therefrom;

Sections 6 to 8 of the SAFEMA are relevant sections which govern the procedure for forfeiture of illegally acquired properties. Section 6 to 8 reads thus:

6. Notice of forfeiture - (1) If, having regard to the value of the properties held by any person to whom this Act applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets and any other information or material available to it as a result of action taken under Sec. 18 or otherwise, the competent authority has reason to believe (the reasons for such

belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Act.

(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

7. Forfeiture of property in certain cases-

(1) the competent authority may, after considering the explanation, if any, to the show cause notice issued under Sec.6, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties.

(2) Where the competent authority is satisfied that some of the properties referred to in the show-cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired

properties and record a finding accordingly under sub-section (1).

(3) Where the competent authority recorded a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Act, stand forfeited to the Central Government free from all encumbrances.

(4) Where any shares in a company stand forfeited to the Central Government under this Act, then the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or the articles of association of the company, forthwith register the Central Government as the transferee of such shares.

8. Burden of proof.- In any proceedings under this Act, the burden of proving that any property specified in the notice served under Sec. 6 is not

illegally acquired property shall be on the person affected.

Section 11 provides for consequences of a transfer being made of the property pending the proceedings under Section 6. Section 11 reads thus :

> "11. Certain transfers to be null and void - Where after the issue of a notice under Sec.6 or under Sec.10, any property referred to in the said notice is transferred to any mode whatsoever such transfer shall, for the purposes of the proceedings under this Act, be ignored and if such property is subsequently forfeited to the Central Government under Sec.7, then the transfer of such property shall be deemed to be null and void."

15. Section 6(1) provides for service of notice. The notice is required to be served on any person to whom SAFEMA applies. Such person is described in the said section as the person affected. Section 7 provides that explanation to the show cause notice issued under section 6(1) shall be considered by the Competent Authority and after giving a reasonable opportunity of

being heard to the person affected. The Competent Authority shall record a finding whether all or any of the properties in question are illegally acquired properties. Sub-section (3) of section 7 lays down that where a Competent Authority records a finding to the effect that any property is illegally acquired property, it shall declare that such property shall stand forfeited to the Central Government free from all encumbrances. Section 8 provides that the burden of proving that any property specified in the notice served under section 6(1) is not illegally acquired property shall on the person affected.

16. The following questions broadly arise for our consideration:

(a) Whether the transfer effected by the detenu in favour of the Petitioner No.1 by the said agreement is null and void at its inception and therefore, the Competent Authority was right in ignoring the said transfer ?

(b) Whether the Petitioner No.1 can be said to be a holder contemplated by clause (e) of sub-section (2) of section 2 of the SAFEMA ?

(c) Whether the Petitioner No.1 is a transferee in good faith for adequate consideration ?

(d) Whether the Petitioner No.1 was the person affected within the meaning of section 6(1) of the SAFEMA ?

(e) Whether the Petitioners were entitled to be heard by the Competent Authority before passing the order of forfeiture ?

17. At this stage it will be necessary to refer to the Judgment of the Apex Court in the case of Aamenabai. After considering the section 11 of the SAFEMA the Apex Court held :

> "It is no doubt true that on the express language of the said section transfer of any property pending the proceedings under section 6 or 10 of the said Act and prior to the order of forfeiture shall be treated to be null and void."

The Apex Court in Aamenabi's case was dealing with the question whether a transaction which is entered into subsequent to the order of forfeiture is null and void.

However, the Apex Court on examining the express language of section 11 has held that any transfer of property pending proceedings under section 6 or 10 of SAFEMA and prior to the order of forfeiture shall be treated as null and void. Thus the Apex Court held that if the transfer of property is effected pending proceedings under section 6 before the order of forfeiture is passed, such transfer is null and void. Proceedings under section 6(1) is commenced on the issuance of notice contemplated by the said provision. Thus what has been held by the Apex Court is if a transfer takes place after issuance of notice under section 6(1) and before the order of forfeiture under section 7(3) of the SAFEMA is passed, the transfer is null and void. Therefore, we are unable to accept the contention of the learned Counsel appearing for the Petitioners and the learned Senior Counsel for the Respondent No.2 that though the said agreement is executed after issuance of notice under section 6(1), the transfer is not null and void till order of forfeiture was passed under section 7(3) of the SAFEMA. In view of this position, the transfer effected by the said agreement in favour of the Petitioner No.1 is null and void and, therefore, non-existent. On the construction of section 11 made by the Apex Court, the transfer effected by the said agreement will be null and

void at its inception. Thus the transfer effected by the said agreement is non-existent as observed by the Appellate Tribunal in the impugned Judgment and Order.

18. A submission was sought to be made by the learned Counsel for the Petitioners that some meaning will have to be assigned to clause (e) of sub-section (2) of section 2. He urged that the Petitioner No.1 was a holder of the said flat within the meaning of said clause (e) and therefore was a person affected within the meaning of Section 6(1). He submitted that a holder of any property which was at any time previously held by a detenu will not be governed by the SAFEMA if such holder is a transferee in good faith for adequate consideration. It was tried to be submitted that if the Petitioner No.1 who is the transferee from the detenu establishes that the transfer was made in good faith for adequate consideration, notwithstanding the provisions of section 11 of SAFEMA, provisions of SAFEMA will not be applicable to such holder and therefore, the order of forfeiture cannot be passed affecting the said flat held by such holder. A further submission was made that since the Petitioner No.1 is a transferee in good faith for valuable consideration, the said acquisition by the Petitioner No.1 will not be a nullity. We are of the view that if the aforesaid contentions of the learned

Counsel for the Petitioners are accepted it will completely nullify the provisions of section 11. On plain reading of both the provisions, it is apparent that a transfer which is contemplated by clause (e) of sub-section (2) of section 2 is obviously a transfer effected before the commencement of proceedings under section 6 or section 10 of SAFEMA. Clause (e) will apply only to such holders/transferees where transfer is effected prior to commencement of proceedings under section 6 or section 10. If any transfer is effected after commencement of proceedings under section 6 or section 10 and before order of forfeiture is passed such transfer is null and void as held by the Apex Court in Aaminabi's case. Such a transfer is null and void and non-existent. No person can become holder of any property by virtue of a Transfer which is a nullity. Thus if there is a transfer made after commencement of proceedings under section 6 or 10 and even if the transfer in good faith for adequate consideration, the transfer will be null and void and the transferee will not be protected by the exception carved out to the clause (e) of Sub-Section (2) of section 2. Therefore, even assuming that the Petitioner No.1 is a transferee in good faith for adequate consideration, still the transfer in favour of the Petitioners is null and void the same having been effected after issuance of notice

under section 6(1) of the SAFEMA. Reliance was sought to be placed on the observation of the Apex Court in the case of Attorney General of India (supra). The said observation reads thus:

> . "...So far as the holders (not being relatives and associates) mentioned in Section 2(2) (e) are concerned, they are dealt with on a separate footing. If such person proves that he is a transferee in good faith for consideration, his property - even though purchased from a convict/detenu - is not liable to be forfeited...."

A perusal of the Judgment of the Apex Court shows that the Apex Court was not dealing with a case where a transfer in good faith for consideration was made after commencement of proceedings under section 6 or section 10 of the SAFEMA. Therefore, the reliance placed on the said observation of the Apex Court in the case of Attorney General (supra) will not help the Petitioners. A reliance was placed by the Petitioners on the Judgment of this Court in case of Narayan (supra). The learned Counsel for the Petitioners then invited our attention to the following portion of the Judgment of this Court

in the case of Narayan:

> . "....Having regard to the provisions of section 19 of the SAFEMA, we are of the view that it is absolutely essential for the competent authority to determine the status of a person in possession of the forfeited property. If it is found that the person in possession is a monthly tenant whose tenancy is created by a person who held the property prior to the purchase of the property by the person whose interest in it is forfeited under the SAFEMA and the Central Government has further accepted monthly rent the legal implication might be quite different..."

It must be borne in mind that the Division Bench of this court was not dealing with the case of a transferee where the transfer was effected after issuance of notice under section 6(1). The case of the Petitioner before this Court was that he was in possession of the property from the year 1959 and proceedings under section 6 were initiated number of years thereafter. It is in the context of this factual position that the aforesaid

observation of the Division Bench appears to have been made. The clause (e) of sub-section (2) of section 2 and the section 11 of the SAFEMA operate at two different stages. The clause (e) applies only to transfers which are made before the commencement of the proceedings under section 6 or 10 of SAFEMA. Section 11 comes into picture only when transfers are made after intiation of proceedings under Section 6 or 10.

19. The Petitioner No.1 cannot be held to be a holder as contemplated by clause (e) of sub-section (2) of section 2 as the transfer in his favour is made after the commencement of proceedings under section 6. The transfer in his favour is void at its inception and therefore such transfer will have to be ignored as held by the Apex Court in Aamenabi's case. Therefore, such a person cannot be held to be a person affected within the meaning of section 6(1) of SAFEMA. The Appellate Tribunal has upheld the order of the Competent Authority essentially on the ground that such transfer in favour of the Petitioner No.1 was null and void and therefore was required to be ignored. While dealing with the contentions of the Petitioners, the Appellate Authority has specifically held that there was no necessity for the Competent Authority to hold that the said agreement was collusive transaction between the parties.

Therefore, there is no substance in the contention of the Petitioners that there is a breach of principles of natural justice. If the transaction in favour of the Petitioner No.1 is to be ignored as per the observation of the Apex Court in Aamenabai's case, the Petitioners cannot claim to have any locus before the Competent Authority. This is not a case where there is any dispute as to whether the transaction has taken place before or after the initiation of proceedings under section 6. If by operation of law transfer in favour of the Petitioner No.1 was null and void, there was nothing to be decided by the Competent Authority in so far as the Petitioner No.1 is concerned.

20. In so far as the contentions raised by the learned Senior Counsel appearing for Respondent No.2 is concerned, it is to be noted that the Respondent No.2-Society has not challenged the impugned orders. The finding recorded by both the authorities is that only right, title and interest of the detenu in the said flat stands forfeited. We, therefore fail to understand how Respondent No.2-society is affected by the forfeiture. In so far as membership of Respondent No.2-society is concerned, the same will be governed by the Maharashtra Cooperative Societies Act, 1960 and the Rules made thereunder as well as the Bye-laws of the

Respondent No.2-society.

21. In view of what we have held in the earlier part of this Judgment, we answer the question (a) in paragraph No.16 in the affirmative and the questions (b) to (e) in the negative.

22. The learned Counsel for the Petitioners at the fag end submitted that the Petitioner No.1 has suffered due to the negligence on the part of the Competent Authority in taking action in respect of the said flat. We find considerable substance in the said contention. As far back as in December 1978 the Competent Authority was made aware that the detenu was likely to transfer the flat. In fact by letter dated 15th December 1978 the Assistant Director in the office of the Competent Authority at Bombay had called upon his counterpart in the office of the Competent Authority at New Delhi to take action in respect of the said flat as early as possible as the detenu was likely to transfer the said flat. However, no action was taken till September 1980. After notice under section 6(1) was served by the Competent Authority, the Competent Authority has chosen to intimate one of the Banks in which the detenue was holding account which was the subject matter of the

notice. However, no such information or intimation was given by the Competent Authority to the Respondent No.2-society. If intimation of the notice under section 6(1) was given by the Competent Authority to the Respondent No.2-society, the Petitioner No.1 would have been cautioned by the society before entering into the said transaction and the Petitioner No.1 would have become aware that notice under section 6(1) of the SAFEMA has been issued against the detenu. However, as the law stands, the transaction in favour of the Petitioner No.1 is null and void. Before parting with this matter, we cannot refrain ourselves from observing that in a case like this the Competent Authority could have taken appropriate action expeditiously to prevent the detenu from selling the said flat in favour of any intending flat purchaser like the Petitioner No.1 and to avoid any further complications the Competent Authority should have issued intimation to the Respondent No.2-society of the proceedings under section 6 of SAFEMA. We feel that considering the drastic provisions of SAFEMA, it is desirable that the Competent Authority should give intimation of action under Section 6(1) to all persons having interest in the property which is sought to be forfeited so that innocent intending purchasers may not suffer.

23. Lastly the learned Counsel for the Petitioner submitted that the Competent Authority should have taken recourse to section 9 of the SAFEMA by giving option to the person affected to pay fine in lieu of forfeiture. However, that is not the contention raised in the petition as well as in the Appeal before the Appellate Tribunal. It is for the Petitioners to take suitable steps if so advised and we record no finding on this aspect.

24. In view of this position, there is no merit in the petition and the same is dismissed. Rule is discharged with no order as to costs.

25. Parties to act on authenticated copy of the judgment.

(Smt.Ranjana Desai, J.)

(Abhay S.Oka, J.)

. At this stage Shri Keswani, learned Counsel for the Petitioners prays that the interim order passed in this Petition may be continued for a reasonable time. Considering the peculiar facts of the case we direct that the interim order operating during the pendency of the petition will continue to operate for a period of sixteen weeks from today subject to Petitioner No.2 filing an usual undertaking for herself and on behalf of the Petitioner No.1 in this Court within three weeks from today stating therein that the Petitioners will not create any third party interests and will not part with possession of the said flat.

(Smt.Ranjana Desai, J.)

(Abhay S.Oka, J.)